

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15608 of Richard G. and Marylee N. Amato, pursuant to 11 DCMR 3107.1, for a variance from the use provisions (Subsection 201.1) to allow a dental office on the ground floor in an R-1-B District at premises 3716 Massachusetts Avenue, N.W. (Square 1815, Lot 73).

HEARING DATE: January 22, 1992
DECISION DATE: April 8, 1992

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The property which is the subject of this application is located at 3716 Massachusetts Avenue, N.W. It is located on the southside of Massachusetts Avenue N.W. between Klinge Street N.W. and Cathedral Avenue N.W., one block west of Wisconsin Avenue N.W. The property is zoned R-1-B.

2. The subject property is located in a residential area. It is improved with a two-story plus basement semi-detached residential structure. The structure has a single main entrance which leads through a vestibule to an existing dentist's office on the first floor and a residential apartment on the second floor. The basement is being used for storage in conjunction with the dentist's office.

3. The area surrounding the subject site is developed primarily with apartment houses along Wisconsin Avenue N.W. The area to the west of the site along Massachusetts Avenue N.W. is developed with single-family detached dwellings and a number of semi-detached residential structures.

4. The subject site is located in an R-1-B District. The R-1-B District permits matter of right development of single-family residential uses for detached dwellings with a minimum lot width of 50 feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet. A dental office is allowed as an accessory use in an R-1-B District only if the dentist resides at the premises.

5. The subject structure is similar to the adjoining residential structures to the west, which are used for residential properties. In the past, it has been used as a dental office with the dentist residing at the premises.

6. The applicant is proposing to rent the second floor of the structure to tenants and to use the first floor and basement for the dental office.

7. The applicant does not intend to reside in the structure.

8. No current certificate of occupancy exists for the dental office use at the site.

9. In a memorandum, the applicant stated that the building has been in use as a dental office and residence for 30 years. The original owner lived and practiced in the house for approximately 20 years until his death. For the past ten years, the office has been maintained by a dentist who has resided off the premises while the living area has been rented. The character and quality of the living area are such that living in the building would be a hardship on the current practitioner, because of the configuration of the structure and the limited amount of space. In addition, the house that the practitioner lives in would have to be sold.

10. In a post-hearing submission to the Board, dated February 27, 1991, the applicant stated:

- (a) The subject property is historically zoned and used as a dental office and cannot be used for any other purpose without incurring costly expenditures.
- (b) The structure of the dental office is incompatible with residential use, and the amount of living space is minimal; and
- (c) Courts in this jurisdiction recognized circumstances justifying a use variance are not limited to physical aspects of the land, but the past zoning history of a property can be taken into account.

11. The applicant also stated that because of the zoning history of the property and the existing structure, which make it uniquely suitable for only one use (a dental office), hardship had been proven.

12. The Office of Planning (OP), by report dated January 14, 1992 and through testimony presented at the public hearing, recommended that this application be denied. OP was of the opinion that the property is similar to other residential properties in the area and does not have any distinguishing characteristics which would prevent its use as prescribed by the provisions of the Zoning Regulations.

13. OP pointed out that the two-story plus basement semi-detached residential structure is similar to the adjoining structure. There are no unique physical characteristics associated with the subject property which would prevent its use for residential purposes for which it is zoned.

14. OP pointed out that an R-1-B District allows matter of right development of single-family residential uses for detached dwellings with a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories 40/feet. A dentist office is allowed as an accessory use in an R-1-B District only if the dentist resides at the premises.

15. OP also noted that the requested use variance would impair the purpose, intent, and integrity of the zone plan for the city because it would provide for a commercial use which is not associated with the resident of the subject premises.

16. OP further reiterated the factors represented by the applicant in support of this application and stated that they are related primarily to convenience and economic issues.

17. Advisory Neighborhood Commission (ANC) 3C, in correspondence to the Board of Zoning Adjustment dated March 10, 1992, stated that it has no objection to the granting of a variance.

18. No one appeared at the hearing to testify in support of or in opposition to the application.

19. Dr. Walter Sowa, the dentist currently practicing on the premises, testified that he purchased the practice from a Dr. Gittamer in October of 1988.

20. He also stated that, he was under the impression that the business was legal with the second floor being rented to different people. Further, he was not aware of the legal ramifications surrounding the Zoning Regulations, and the need for a certificate of occupancy.

21. Dr. Sowa also stated that he does not intend to live at the premises, because the living quarters are small.

FINDINGS OF FACT:

Based on the evidence of record the Board finds as follows:

1. The applicant wants to use the first floor of the residential structure as a dental office, and the

second floor of the premises as a residence for person(s) other than the dentist on the first floor.

2. The area surrounding the site is primarily residential.
3. The subject property is similar to other properties in the area.
4. The applicant does not reside at the premises.
5. The applicant does not have a certificate of occupancy for the current use.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a use variance, the granting of which requires proof of a hardship that is inherent in the property itself. The Board concludes that no such hardship exists as evidenced by the previous use of the property. Further, the Board concludes that the applicant's request is based on personal convenience and that he has not met the burden of proof. No probative evidence was offered that the property could not be put to a use permitted in the R-1-B District nor that the previous use of the property could not continue. In fact, the applicant stated that the property has been in use as a dental office and cannot be used for any other purpose in that costly expenditures would be incurred. The original owner lived and practiced in the house for approximately 20 years. For the past ten years, the office has been maintained by a dentist who has resided off the premises while the living area has been rented. This fact negates the proposition that the property cannot be used as permitted.

In addition, the Board concludes that the property is similar to other residential properties in the area and does not have any distinguishing characteristics which would prevent its use as prescribed by the provisions of the Zoning Regulations. The Board acknowledges that the applicant's preference is not to reside at the premises for residential purposes, or reconfigure the property because of economic hardship. The Board concludes that the applicant offers no evidence of economic hardship. For the Board to relieve the applicant of its duty to adhere to the Zoning Regulations, the reason for not complying must relate to a condition of the property rather than personal preference or desires.

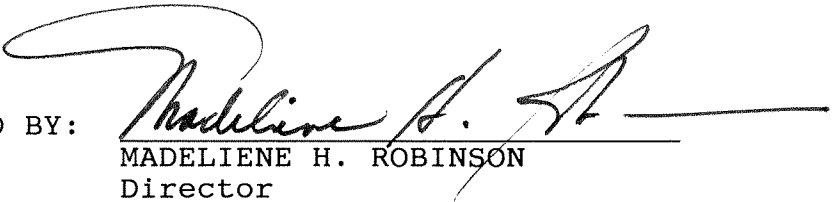
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The Board further concludes that the relief cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan for the city because it would provide for a commercial use which is not associated with a medical practitioner residing on the subject premises. Accordingly, it is ORDERED that the application be DENIED.

VOTE: 3-0 (Lloyd D. Smith; Carrie L. Thornhill and Paula L. Jewell to deny).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: _____

OCT 21 1993

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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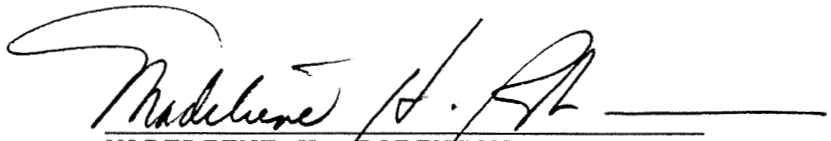
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As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on OCT 21 1993 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Walter Sowa, DDS
3716 Massachusetts Avenue, N.W.
Washington, D.C. 20016

Richard G. Amato
3121 Northampton Street, N.W.
Washington, D.C. 20015

Patricia Wamsley, Chairperson
Advisory Neighborhood Commission 3-C
2737 Devonshire Place, N.W.
Washington, D.C. 20008


MADELIENE H. ROBINSON
Director

DATE: OCT 21 1993